

Comments on the Kerala Ayurveda Health Centres (Issue of License and Control) Bill, 2007

EQUATIONS

The Kerala Ayurveda Health Centres (Issue of License and Control) Bill 2007 aims to regulate the issue of licences to Ayurveda Health Centres in the state and to control their functions. This paper is a section-by-section comment on the Bill.

Kerala Gazette No. 35 dated 4th September 2007.

PART II

SECRETARIAT OF THE KERALA LEGISLATURE NOTIFICATION

No. 3130/Leg.n.2/07/Leg.

Dated, Thiruvananthapuram, 4th September, 2007.

The Kerala Ayurveda Health Centres (Issue of Licence and Control) Bill, 2007 together with the Statement of Object and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

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Secretary,
Legislative Assembly

THE KERALA AYURVEDA HEALTH CENTRES
(ISSUE OF LICENCE AND CONTROL) BILL, 2007

A
BILL

to provide for the issue of licence to Ayurveda Health Centres in the State and to control their functions.

Preamble.—WHEREAS it is expedient to provide for the issue of licence to Ayurveda Health Centres in the State and to control their functions;

BE it enacted in the Fifty-eighth year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Ayurveda Health Centres (Issue of Licence and Control) Act, 2007.
2. It extends to the whole of the State of Kerala.
3. It shall come into force from such date as the Government may by notification in the Gazette, appoint.

CHAPTER I
PRELIMINARY

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) “Ayurveda Health Centre” means an establishment or premises by whatever name be known to provide Ayurveda treatment but does not include the establishments, which are under the direct ownership or management of the Government;

EQUATIONS Comments: The definition does not clarify whether the term establishment or premises also includes the House Boat Services, which are increasingly being used as Ayurveda Health Centres. The General Clauses Act, 1897 does not define the term establishment.

The definition of "Commercial Establishment" given in the Kerala Shops and Establishments Act indicates that houseboats should be included in the definition. The definition clearly says any a commercial establishment in which the persons employed are mainly engaged in hotel, restaurant boarding or eating house, cafe or any other refreshment house or any other place of public amusement or entertainment and includes such other establishment as the Government may declare. Moreover the definition of "establishment" means a shop or a commercial establishment. It is a known fact that House Boats all over Kerala are used by the hospitality industry for commercial use with facilities of boarding, restaurant, café and other refreshments and facilities like ayurvedic massages. At present they require licenses from PCB and Authority in charge of the canals.

The Bill excludes Govt. owned establishments (Ayurveda Health Centres) from the purview of the legislation. Therefore the question arises:

- **How are these centres regulated? / How is the quality of service regulated?**
- **What conditions apply in respect to the Govt. owned Ayurvedic Health Centres?**
- **Are they completely excluded from the formality of Licensing?**

The justification for the exclusion of government run centres and to bring only private centres under the scanner for license and control is not clear

(b) “Director” means the Director of Department of Indian System of Medicine under the Government of Kerala having jurisdiction all over the State;

(c) “Government” means the Government of Kerala;

(d) “Local Self Government Institution” means a Village Panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994), or a Municipality constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(e) “Manager” means the owner or the person responsible for the administration and management of an Ayurveda Health Centre;

- (f) "Masseur/Therapist" means a person employed for the treatment as directed by a registered medical practitioner in an Ayurveda Health Centre and having recognised qualifications as prescribed;
- (g) "Nurse" means a person employed for nursing duty in an Ayurveda Health Centre and having equivalent qualification, as prescribed;

EQUATIONS Comments: The Nurse should mean a person who has been registered as a nurse and holds a certificate of registration with the Kerala Nurses & Midwives Council. This should be explicitly mentioned in the legislation. Any body cannot be appointed as a nurse unless the person holds a certificate of registration proving that the persons has required qualification and training to undertake the responsibilities as a nurse. The risk of designating the person as a nurse and then making them perform duties not of a nurse is not far fetched, given the context in which such a legislature has been effected in the state.

- (h) "Prescribed" means prescribed by rules made under this Act;
- (i) "Licence" means the licence issued by the Director after conducting necessary inspections as specified in this Act;
- (j) "Registered Medical Practitioner" means an Ayurveda Medical Practitioner registered under the Travancore-Cochin Medical Practitioners Act, 1953 (9 of 1953) or Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) as A-Class;
- (k) "State" means the State of Kerala;
- (l) "Treatment" means all types of treatments provided as per Indian systems of treatment such as Ayurveda, Siddha, Unani, for the cure of any particular disease or improving the health of any person.

CHAPTER II ISSUE OF LICENCE AND CONTROL

3. *Issue of licence to Ayurveda Health Centres.*—(1) No person shall run any Ayurveda Health Centre within the jurisdiction of a local self Government institution after the commencement of this Act without a licence issued under section 6 of this Act in addition to the licence issued from the Local Self Government Institution.

EQUATIONS Comments: The objective of the present Bill is commendable and has been a point of advocacy and campaign by the local NGOs for many years now. The primary aim was to control the mushrooming of Ayurveda Health Centres (AHC) in the State who operated many clandestine activities like flesh trade behind the veil of AHC.

(2) In the case of an Ayurveda Health Centre existing, within the jurisdiction of any Local Self Government Institution, at the time of commencement of this Act, shall obtain licence under this Act within six months from the date of commencement of this Act and if fails to obtain such licence or to apply for such licence, such Centre shall not continue to function after the above said period of six months.

(3) The period of licence issued under section 6 shall be for three years from the date of its receipt and the same shall be renewed after every three years.

EQUATIONS Comments: Need to rethink on 3 year license period, otherwise mandatory inspections may be prescribed every six months.

4. *Conditions for the issue of licence.*—(1) Based on the facilities of treatment in the Ayurveda Health Centres, they are classified into three as Category (A), Category (B) and Category (C) and the facilities to be available there shall be as follows, namely:—

I. Category (A)

1. The patients shall have convenient accommodation facility in separate rooms or ward;
2. There shall be treatment rooms in the proportion one for eight patients;
3. The treatment room shall have an area of at least 100 square feet and bathroom and toilet facilities shall be attached thereto;
4. There shall be a 'dhroni' made up of wood or fibre having at least 7 feet length and 2½ feet width in the treatment room;
5. Drinking water, air and light shall be available in the treatment room;
6. Stove and hygienic accessory equipments shall be available in the treatment room;

7. There shall be a Medical Practitioner's consultation room with equipments such as examination tables, stethoscope and B. P. apparatus;
8. Scientifically made Vasthi Yanthra and necessary utensils shall be available;
9. There shall be at least one registered Medical Practitioner of full time service;
10. There shall be atleast two male therapists/masseurs and two female therapists/masseurs and the proportion of therapists/masseurs shall be increased according to the number of treatment room, as prescribed;

EQUATIONS Comments: It is important to clarify what employment rules and regulations will apply to those employed in these centres (to the employees). They will be governed under which Act? They will come under the ambit of the Factories Act only if the total strength of employees is more than 20. Since, in the present situation the houseboats are not regulated under any legislation the issue needs to be addressed under this proposed Act

The main points of clarifications are like:

- **Hours of work for each staff (Minimum and Maximum number of hours each can put in).**
- **No. of holidays or rest days per week.**
- **Safety provisions to prevent sexual exploitation/harassment of workers(particularly women) in the Ayurvedic Health centres**
- **What special measures will be taken to safeguard the female employees (including the masseurs and the nurses) against any sexual or other harassment when employed in the night shift?**

11. There shall be a nurse for full time service in an Ayurveda Health Centre and if it exceeds 8 beds, there shall be nurses in the proportion one for eight;

EQUATIONS Comments: It is not practical to suggest that one Nurse shall provide full time service to 8 patients round the clock (for 24 hours). Hence, the number of nurses employed in each institution should be realistically decided.

12. Necessary employees shall be there for cleaning work, etc.;
13. There shall be a responsible Manager in the treatment centre.

II. Category (B)

1. The treatment room shall have an area of at least 100 square feet and bathroom and toilet facilities shall be attached thereto;
2. There shall be a 'dhroni' made up of wood or fibre having at least 7 feet length and 2½ feet width in the treatment room;
3. Drinking water, air and light shall be available in the treatment room;
4. Stove and hygienic accessory equipments shall be available in the treatment room;
5. There shall be a Medical Practitioner's consultation room with equipments such as examination tables, stethoscope and B. P. apparatus etc.;
6. There shall be at least one male therapist/masseur and a female therapist/masseur and the proportion of therapists/masseur shall be increased according to the number of treatment rooms, as prescribed.
7. The service of a Registered Medical Practitioner shall be available during working hours.

III. Category (C)

1. The treatment rooms shall have an area of at least 100 square feet and bathroom and toilet facilities shall be attached thereto;
2. There shall be a 'dhroni' made up of wood or fibre having at least 7 feet in length and 2½ feet width in the treatment room;
3. Drinking water, air and light shall be available in the treatment room;
4. Stove and hygienic accessory equipments, shall be available in the treatment room;
5. There shall be a Medical Practitioner's consultation room with minimum equipments such as examination tables, stethoscope and B. P. apparatus;
6. There shall be at least one male therapist/masseur and a female therapist/masseur and the proportion of therapist/masseur shall be increased according to the number of treatment rooms, as prescribed;
7. The service of a Registered Medical Practitioner shall be available during working hours.

(2) In-patient treatment shall not be carried out in Ayurveda Health Centres included in category (B). Complicated treatments and 'Panchakarma' treatments such as, 'Vamanam', 'Virechanam', 'Vasthy' and 'Nasyam' shall not be carried out in the Ayurveda Health Centres included in category (C) but massaging and Udvartanam can be carried out.

EQUATIONS Comments: Ayurvedic doctors point out that for complicated treatments and Panchakarma treatment, in-patient treatment is necessary and in that case such treatments should not be permitted in category (B)

(3) The following general conditions shall apply to all categories of Ayurveda Health Centres, namely:—

- (i) The therapist/masseur shall wear uniform, as prescribed during working hours;
- (ii) The treatment of male patients who come to a centre for treatment shall be done only by male therapist/masseurs and the treatment of female patient shall be done only by female therapist/masseurs;
- (iii) Only quality medicines shall be used in an Ayurveda Health Centre for treatment and the components of the medicines shall be convinced to the examiner;

EQUATIONS Comments: The norms for quality need to be specified.

- (iv) The medicines and oils used for one patient shall not be used for another patient and arrangement shall be made in such Ayurveda Health Centre for the destruction and disposal of the same and other wastes in such a manner not harmful to the environment;

EQUATIONS Comments: The disposal of medicines and oils used for patients and other wastes should be done in a manner not only harmful to the environment but also the local community. Appropriate technology for the disposal of such waste to be developed and standardised.

- (v) Every Ayurveda Health Centre shall be established in healthy surroundings only and shall be free from sound pollution, as far as possible;
- (vi) The name, licence number, details of the licence and working hours of each Ayurveda Health Centre shall be exhibited in the building or premises where it is established in a manner clearly visible from outside;
- (vii) Register containing the details of the persons coming for treatment in an Ayurveda Health Centre and case sheet shall compulsorily be kept;
- (viii) Every Ayurveda Health Centre shall exhibit the details of employees of that Centre, working hours, the methods of treatment provided therein and the fees fixed for each item of treatment, etc., as prescribed.

5. Powers and duties of the Director.—

1. The power to issue or renew licence to any Ayurveda Health Centre shall be with the Director.
2. The licence shall be issued only after ensuring that the conditions under section 4 has been complied with in an Ayurveda Health Centre by the Director in person or through a Medical Officer authorised by him. Further, it shall be specified in the licence under the which category the Ayurveda Health Centre comes.
3. The Director or the Medical Officer authorised by him shall have the power to enter in any Ayurveda Health Centre, on complaint or suo motu and to inspect whether that Centre is following the conditions under section 4.
4. For the purpose of inspection under sub-section (2) or sub-section (3), such officer shall have the power to require articles, registers, documents and to discover them and to conduct necessary search.
5. The Manager of an Ayurveda Health Centre shall have the duty and responsibility to render all necessary assistance to the officer mentioned in sub-section (2) to conduct inspection or search under this Act.
6. Any person who does not render lawful assistance or obstructs an officer mentioned in sub-section (2), for conducting inspection or search under this Act in an Ayurveda Health Centre, shall be deemed to have committed an offence under this Act.

6. Application for licence and fees.—

1. Every application for licence or renewal of an Ayurveda Health Centre shall be submitted to the Director in the prescribed form along with the fees as prescribed.
2. The Director shall take decision on the application for licence or renewal within the prescribed time.

EQUATIONS Comments: It should be suggested that the Director would act in consultation with the LSGI who have the power of registration as stated in Chapter XXV (section 269-271) of the Kerala Panchayat

Raj Act 1994 and The Kerala Panchayat Raj (Registration of Private Hospitals and Private Paramedical Institutions) Rules, 1997 . It would ensure not only transparency in the system but also a system of check and balance.

7. Cancellation of licence.

1. If it is found on any inspection conducted under sub-section (3) of section 5, that an Ayurveda Health Centre is not complying or violating the conditions, the Director or the Medical Officer authorised by him shall issue a notice specifying such default or defects to the Manager of such Ayurveda Health Centre requiring him to rectify the same within the time limit specifically mentioned therein.
2. The Ayurveda Health Centre concerned shall rectify any defaults or defects specified in the notice issued under sub-section (1) within the time limit specified in that notice and the fact of such rectification shall be communicated by the Manager of such Ayurveda Health Centre to the Officer, in writing, who issued the notice under sub-section (1).
3. On receipt of an intimation under sub-section (2) that any defaults or defects specified in the notice under sub-section (1) has been rectified within the time limit specified in the notice, the officer mentioned in sub-section (1) shall re-inspect such centre and confirm that the rectification has been carried out as per the information.
4. If it is proved that the concerned Ayurveda Health Centre has not rectified the defaults or defects specified in the notice under sub-section (1) or rejects such notice, the Director shall suspend the licence of such Ayurveda Health Centre for a specified period and if it is found on inspection that the defects are not rectified even after the said period, the Director shall cancel the licence of such centre.

8. Penalty.

1. Any person who establishes or conducts any Ayurveda Health Centre without licence, in contravention of the provisions of this Act shall on conviction, be punished with fine which may extend to one lakh rupees.
2. Any person who commits an offence under this Act, except those mentioned in sub-section (1), shall, on conviction, be punished with fine, which may extend to fifty thousand rupees.

9. Offences by companies.

1. Where the offence committed under this Act is a company, any person, who at the time of commission of the offence was in charge of, and was responsible to the company for the conduct of its business, shall be deemed to be guilty of the offence together with the company and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.
2. Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the connivance or neglect on the part of any Director or Manager or Secretary or any other officer of the company, such Director or Manager or Secretary or any other officer of the Company also shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

EQUATIONS Comments: It is better to constitute a website owned by Director of Department of Indian System of Medicine under the Government of Kerala so that patients who are not satisfied with the quality of service or the standard of medical treatment can make necessary complaints directly to the Director. The web site should show all the registered Ayurveda centres in each district including their category and the period of license. The website should be updated weekly. If there are more than three or four repeat offences the licence has to be permanently cancelled.

Explanation.—For the purpose of this sub-section:—

- (a) 'Company' means a body corporate and includes a firm or other association of persons or an Organisation or Co-operative Society.
- (b) 'Director' in relation to a firm means a partner in the firm.

10. Appeal.

1. Any person aggrieved by an order of the Director, passed under this Act, may prefer an appeal before the Government within thirty days from the date of receipt of such order, and the Government shall, after giving the appellant an opportunity of being heard, pass an order confirming, modifying, or cancelling the order subjected to appeal, as they deem fit.

2. The order passed by the Government under sub-section (1) shall be final.

CHAPTER III MISCELLANEOUS

11. *Power to make rules.*

1. The Government may, by notification in the Gazette, make rules, either prospectively or retrospectively to carryout all or any of the purposes of this Act.
2. In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—
 - (a) all matters expressly required or permitted by this Act to be prescribed.
 - (b) any other matter which is to be, or may be, prescribed.
3. Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in Session for a total period of fourteen days which may be comprised in one Session, or in two successive Sessions, and if before the expiry of the Session in which it is so laid or the Session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

12. *Power to remove difficulties.*

1. If any difficulty arises in giving effect to the provisions of this Act, the Government may, as the occasion may require, by order, do anything not inconsistent with the provisions of this Act which appear to them necessary or expedient for removing the difficulty : Provided that no such order shall be passed after two years from the date of commencement of this Act.

13. *Repeal and Saving.*

1. The Kerala Ayurveda Health Centres (Issue of Licence and Control) Ordinance, 2007 (43 of 2007) is hereby repealed.
2. Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

Ayurveda, the noble and ancient system of treatment of India, is gaining again importance and universal acceptance now-a-days. At present, most of the well known treatment centres and Physicians having skill and knowledge in such Ayurvedic system of treatment are in the State of Kerala.

2. A large number of persons, both domestic and foreigners especially tourists are coming to Kerala, not only for the cure of diseases but also for Ayurvedic treatment for health care. In order to exploit this opportunity, many Ayurvedic centres are coming up especially in the tourist centres, in various parts of the State in various names such as massage centres, wellness treatment centres and massage parlours. A number of such rising centres are having no basic facilities for proper Ayurvedic System of treatment, or trained and experienced Physicians, Masseurs/ Therapist. As a result of this, the treatment provided in such centres are becoming unscientific and unhealthy and often bring in bad effect rather than good. Further, there are complaints and news that sexual activities are taking place in some of such centres and that the persons who approach for treatment in such centres are victimising to sexual exploitation and harassment. It has come to the notice of the Government that as a result of the immoral activities of such centres, it causes disgrace to the State of Kerala and to the Indian System of treatment including Ayurveda as a whole. In this circumstances, Government considered it necessary to enact a legislation for the establishment, operation and control of Ayurveda Health Centres in the State.

3. As the Legislative Assembly of the State of Kerala was not in session and circumstances existed to bring in an immediate legislation to implement the above decision the Kerala Ayurveda Health Centres (issue of Licence and Control) Ordinance, 2006 (2 of 2006) was promulgated by the Governor of Kerala and was published in the Kerala Gazette Extraordinary No. 31 dated the 6th January, 2006.

4. A Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 3rd day of February, 2006 and ended on the 21st day of February, 2006 and in the session which commenced on the 14th day of March, 2006 and ended on the 15th day of March, 2006, and as the provisions of the said Ordinance are to be kept alive the Kerala Ayurveda Health Centres (Issue of Licence and Control) Ordinance, 2006 (22 of 2006) was promulgated by the Governor on the 17th day of March, 2006 and was published as the Gazette Extraordinary No. 598 dated the 17th March, 2006.

5. As a Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 24th day of May, 2006 and ended on the 30th day of June, 2006, and as the provisions of the said Ordinance are to be kept alive the Kerala Ayurveda Health Centres (Issue of Licence and Control) Ordinance, 2006 (31 of 2006) was promulgated by the Governor on the 5th day of July, 2006 and was published as the Gazette Extraordinary No. 1125 dated the 5th July, 2006.

6. A Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 18th day of September, 2006 and ended on the 26th day of October, 2006, and as the provisions of the said Ordinance are to be kept alive the Kerala Ayurveda Health Centres (Issue of Licence and Control) Ordinance, 2006 (45 of 2006) was promulgated by the Governor on the 30th day of October, 2006 and was published as the Gazette Extraordinary No. 1709 dated 30th October, 2006.

7. A Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 27th day of December, 2006 and ended on the 29th day of December, 2006, and in order to keep alive the provisions of the said Ordinance the Kerala Ayurveda Health Centres (Issue of Licence and Control) Ordinance, 2007 (6 of 2007) was promulgated by the Governor of Kerala on the 4th day of February, 2007 and was published as the Gazette Extraordinary No. 205 dated the 5th February, 2007.

8. A Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 2nd day of March, 2007, and ended on the 29th day of March, 2007 and in order to keep alive the provisions of the said Ordinance the Kerala Ayurveda Health Centres (Issue of Licence and Control) Ordinance, 2007 (33 of 2007) was promulgated by the Governor of Kerala on the 30th day of March, 2007 and was published as the Gazette Extraordinary No. 638 dated the 2nd April, 2007.

9. A Bill to replace the said Ordinance by an Act of the Legislature has been published as Bill No. 117 and the same could not be introduced in, and passed by, the Twelfth Legislative Assembly of the State of Kerala during its session which commenced on the 19th day of June, 2007 and ended on the 26th day of July, 2007 and in order to keep alive the provisions of the said Ordinance, the Kerala Ayurveda Health Centres (Issue of Licence and Control) Ordinance, 2007 (43 of 2007) was promulgated by the Governor of Kerala on the 30th day of July, 2007 and was published as the Gazette Extraordinary No. 1403 dated the 30th July, 2007.

10. The Bill seeks to replace the Ordinance No. 43 of 2007 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Items (10), (6), (6) under the headings Category (A), Category (B) and Category (C), respectively of sub-clause (1) of clause 4 of the Bill seeks to empower the Government to prescribe the number of Therapist/Masseurs should be available in Ayurveda Health Centres.
2. Item (viii) of sub-clause (3) of the said clause seeks to empower the Government to prescribe the manner in which the details of employees in each Ayurvedic Centre, working hours, the fees prescribed for each item of treatment providing there etc., should be exhibited.

3. Sub-clause (1) of clause 6 of the Bill seeks to empower the Government to prescribe the form and fees for applying for the licence or renewal.
4. Sub-clause (2) of clause 6 of the Bill seeks to empower the Government to prescribe the time for taking decision on the application for the licence or renewal.
5. Clause 11 of the Bill seeks to empower the Government to make rules either prospectively or retrospectively to carry out the purposes of this Act.
6. The matters in respect of which notifications may be issued or rules may be made are matters of procedure and are routine or administrative in nature. Further, the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of the legislative power is thus, of a normal character.

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